SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 15 1967
JOHN F. DAVIS, CLERK

The Supreme Court Of The United States

October Term, 1967

No. 819

David R. Weinberg,

Petitioner

vs.

Board Of Commissioners Of The
Alabama State Bar, Et Al,

Respondents

Petition For A Writ Of Certiorari To The
Supreme Court Of Alabama

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INDEX

1. Reference to Court's Opinion and Jurisdictional Statement 1

2. Questions Presented 2

3. Statutes Involved 4, A13

4. Statement of the Case 5

5. Reasons for Granting the Writ 12

6. Conclusion 13

7. Appendices

   A. Copy of Alabama Supreme Court's Opinion A1

   B. Copy of Character and Fitness Committee's Order A10

   C. Statutes Involved A13

TABLE OF CASES, STATUTES AND TEXTS

1. Table of Cases
2. Table of Statutes
3. Texts

Table of Cases

Ex Parte Dozier
262 Ala. 197 77 So. 2d 903 9

Ex Parte Montgomery Cases
12 So. 2d 314, 244 Ala. 19
21 So. 2d 85, 249 Ala. 378 9

Gault v. U. S.
Supreme Court, Unreported
May 15, 1967 9

Konigsberg v. State Bar
of California (1957-1961)
353 U. S. 252, 1 L. Ed. 2d 1441,
366 U. S. 36, 6 L. Ed. 2d 105,
81 S. Ct. 997 12

Law v. State
191 So. 803, 238 Ala. 428 9

Miller v. State
110 Ala. 69, 120 So. 392 9

Upton v. State
52 So. 2nd 824 9

Schware v. Board of Bar Examiners
(1957)
353 U.S. 232, 1 L. Ed. 2d 796,
77 S. Ct. 752 12

Table of Statutes

14th Amendment of the United States Constitution 4

Rules Governing Admission to the Bar of Alabama
3 Alabama Lawyer No. 1, P. 98 A13

Bastardy Statutes
Title 6, Section 1-24, Code of Alabama, as recompiled 1958 9

Non-Support Statutes
Title 34, Sections 89 - 94, 1940 Code of Alabama 9

Texts

The Law of Evidence in Alabama, 1948
Judge J. R. McElroy, P. 6, Section 21 9

1. REFERENCE TO COURT'S OPINION AND JURISDICTIONAL STATEMENT

The lay petitioner, David R. Weinberg, prays that a Writ of Certiorari be issued to review the record in the Alabama Supreme Court.

On 22 June, 1967, the Alabama Supreme Court ordered that petitioner was afforded due process of law and was legally denied the right to take the Alabama Bar examination looking toward his being licensed as an attorney and admitted to the Bar. The Court found that the Order of the Board of Commissioners of the Alabama State Bar had presented substantial evidence in the record that petitioner had questionable character because of his belated disclosure of a Bastardy - Juvenile Court, Non-Support Proceeding against him. (A1, R90) As of this date, the Alabama Supreme Court's opinion is not reported.

Petitioner did not apply for a rehearing before the Alabama Supreme Court. On 20 September, 1967, this Supreme Court entered an order extending the time to file this petition up to and including 20 November, 1967.

This Supreme Court's jurisdiction is believed to be conferred by 28 U.S.C., Section 1651(A). Petitioner asserts that the Alabama State Bar rules are violative of the due process clause of the 14th Amendment to the U. S. Constitution and that he has wrongfully been denied the right to legally qualify to earn a living as a lawyer in Alabama in violation of the due process clause.

2. QUESTIONS PRESENTED

Whether the State Board wrongfully denied petitioner the opportunity to qualify to take the Bar examination looking toward his admission to become an attorney at law in violation of his rights under the due process clause of the 14th Amendment to the U. S. Constitution as follows:

1. The Board's rule requiring the burden to be on applicant to establish to a reasonable satisfaction of a majority of said Committee that he possesses such character and qualifications as to justify his admission to the Bar and qualify him to perform the duties of a lawyer together with the rule of proof requiring the evidence to be in the form the Committee may require amounts to the Committee being allowed to disqualify applicant at the Committee's whim.

2. The Board's finding that petitioner filed with the Board conflicting statements on a required sworn law student registration form and an admission application concerning a Bastardy - Juvenile Court, Non-Support Proceeding is not reasonably supported by the evidence of record.

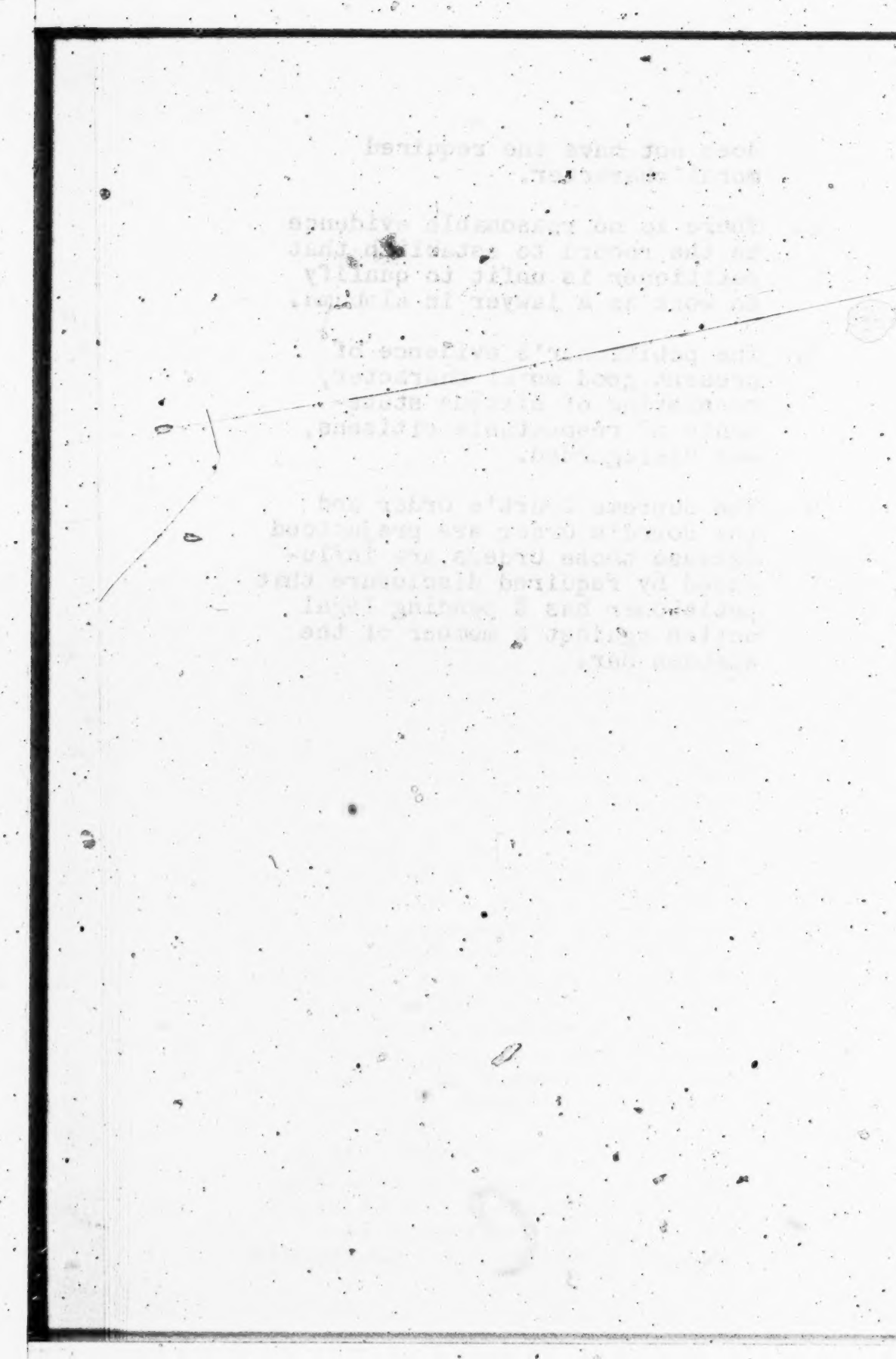
3. Petitioner's involvement in a Bastardy - Juvenile Court, Non-Support Proceeding almost eight years ago is too remote to support a motion that petitioner

does not have the required moral character.

4. There is no reasonable evidence in the record to establish that petitioner is unfit to qualify to work as a lawyer in Alabama.

5. The petitioner's evidence of present good moral character, consisting of sixteen statements of respectable citizens, was disregarded.

6. The Supreme Court's Order and the Board's Order are prejudiced because those Orders are influenced by required disclosure that petitioner has a pending legal action against a member of the Alabama Bar.



3. STATUTES INVOLVED

This case involves a law student's liberty to legally gain public and private employment as an attorney at law and the State Bar's regulation of that liberty.

The 14th Amendment to the U. S. Constitution provides, in relevant part, "nor shall any state deprive any person of life, liberty, or property, without due process of law; ...".

The State Bar rules are lengthy, twenty pages of fine print. Their pertinent text is set out in Appendix C, A13. The only known citation is 3 Alabama Lawyer No. 1, P. 98.

4. STATEMENT OF THE CASE

This civil proceeding involves the second proceeding concerning the State's finding that petitioner failed to establish that he possesses such character and qualifications as to justify his admission to the Bar and qualify him to earn a living as an attorney. Good moral character is not mentioned in the Board's Rules of Admission. (App..C, A13)

Petitioner seeks review of the record evidence of a second de novo hearing before the Board, in Montgomery, Alabama, on 20 May, 1966. The Alabama Supreme Court confined its review to the record of that hearing. (R93, 97)

Petitioner chronologically sets out the record evidence of that hearing:

The Board's General Counsel made an opening statement, reading the Committee's Order appealed from, dated 17 February, 1966. (R10, 11, 18, 19, 20, 21; App. B, A10)

After some discussion, he presented his case by stating that he introduced into evidence a required sworn registration as a law student form dated 14 February, 1962, whereon petitioner answered that he had never been charged with violating State, Federal or City laws. (R37, 38)

Then he said he introduced into the record an admission application dated June, 1965, which related to petitioner's first application for admission. (R38, 39).

Then the General Counsel introduced into the record the petitioner's application for admission dated 4 February, 1966. Question 11 of

this admission application is: "Have you ever been a party or otherwise involved in any legal proceeding, civil or criminal?". To this question petitioner answered "yes" and attached a separate explanation: "The record shows (1) I was arrested on a Bastardy Warrant in 1959. I acknowledged paternity in 1960 and on the same day in Juvenile Court the Court records show I was arrested, charged and plead guilty to desertion and non-support, sentence suspended to make support payments. (2) Two clients at Fairfield Paint and Body Shop for debts in 1964. (3) IRS suit for reinstatement for falsifying job application. I did not intentionally hide the facts in (1) above on said job form. Partially reversed in toto, December 22, 1966. (4) B. McCullough, Jr., improper defense Bastardy Action and disclosing Bastardy Action. Pending CC in B'ham - see your records - trying to settle. (5) Review Bar decision in SC in Alabama would not let me take the Bar exam. I will dismiss the suit on about February 10, 1966. See your records. Character and Fitness Disapproved Application July 20, 1965." (R6, 7, 8, 9; App. A, A2, 3)

That concluded the Board's evidence.

The Board failed to establish the following:

1. Any documentary evidence of any supposed sworn registration as a law student form;
2. Any certified copy of the Bastardy - Non-Support Proceeding;
3. Any circumstances of that proceeding;
4. Any testimony or affidavit

showing the circumstances that petitioner swore to any registration as a law student form;

5. That petitioner swore to any registration form before a notary public.

The Court's Opinion states that this questionaire purports to have been sworn to before a notary public. (R91; App. A, A2)

Furthermore, no registration as a law student form is required under the Board's Rules. (App. C, A13)

Petitioner entered a law school in 1961 (R7) well before the cut-off date of 1 June, 1962, required by The Board's Rules. The Alabama Supreme Court's Opinion stated that the Board's Rules required a registration form. (R91; App. A, A1)

Further, the Alabama Supreme Court decided, "a prima facie case fully supporting the action of the Character and Fitness Committee, and of the Board after the de novo hearing, was well made out by the documentary evidence of the contradictions contained in the answers of the student's registration form and the application to take the bar examination as pertains to Weinberg being involved in prior court actions." (App. A, A8; R98)

The only thing is -- there is only one admission application in the record evidence.

Petitioner did not take the stand. He turned his file over to the General Counsel and he introduced his

unsworn statements. The General Counsel admitted petitioner's file without objection (R42) as follows:

> Petitioner did not swear to any registration form, had forgotten the bastardy proceeding, and did not carefully read and understand the question involved on the registration form. (App. A, A4; R42, 43)
>
> Then introduced was petitioner's unsworn statement that he has lived in Birmingham all his thirty years, was graduated from grammar school and high school, honorably discharged from the Navy, was graduated from the University of Alabama and, after five years night study, was graduated from the Birmingham School of Law in May, 1965. He is a member of church and Sunday School. (R43, 44)
>
> Next introduced were the documentary court records concerning one Roy Landrum. They were introduced with his consent. He is a practicing attorney in Alabama. Indictments for flogging and conspiracy were introduced. Those charges were subsequently dismissed against Mr. Landrum. (R45, 46; R52 thru 64)
>
> Then introduced was petitioner's unsworn statement of the Juvenile Court, Non-Support conviction. He stated, in substance, that the records show that while in college he acknowledged paternity in Circuit Court on 2 February, 1960 where, on

the same day the case was transferred to Juvenile Court where, without a lawyer, he was arrested and convicted of non-support, sentence suspended on making support payments. He did not know he owed any support money. (R48)

That dual proceeding in Juvenile Court, bastardy acknowledgement, then non-support, was the way those proceedings were handled to obtain greater support payments than the bastardy statutes allowed. That is not criminal conduct and does not involve moral turpitude or any base or vile conduct. See Gault v. U. S., U. S. Supreme Court, Unreported May 15, 1967 and Title 6, Section 1-24, Code of Alabama 1940, as recompiled 1958; Miller v. State, 110 Ala. 69, 120 So. 392; Shows v. Solomon, 91 Ala. 811, 8 So. 703; Title 34, Sections 89 thru 94, Code of Alabama; Law v. State, 191 So. 803, 238 Ala. 428; Upton v. State, 52 So. 2d 824. The Attorney General of Alabama, in an opinion letter dated 12 April, 1965, to Honorable W. M. Gwin, terms non-support as quasi criminal and not one involving moral turpitude.

The 1960 bastardy - non-support proceeding is remote, now almost eight years old. Practicing attorneys are afforded a three year statute of limitations in proceedings to disbar them. Ex Parte Dozier, 262 Ala. 197, 77 So. 2d 903. Petitioner is not asserting he has such protection, but that the weight of the evidence is effected. The Law of Evidence in Alabama, Judge J. R. McElroy 1948, P. 6, Section 21, and see the Montgomery Cases, 12 So. 2d 314, 244 Ala. 19, 21 So. 2d 85, 249 Ala. 378.

Next introduced into the record were three affidavits from attorneys attesting to petitioner's good moral character (R73, 74, 75) and thirteen letters from citizens who know petitioner, including three ministers (R76, 77, 79) and a Sunday School teacher (R64). (R48, 49, 50, 64 thru 79) That evidence is strong evidence that petitioner is qualified to earn a living as an attorney.

That concludes the petitioner's record evidence.

Incidently, on the 1966 admission application was petitioner's disclosure that he was fired from the Internal Revenue Service for not disclosing the bastardy proceeding on a job application some time in 1960. That petitioner brought suit for reinstatement and that proceeding was partially reversed on 22 December, 1966. (R8, 40) (The U. S. Court of Appeals found he did not make any false statement on that job application - see Weinberg v. Macey, et al, December 22, 1966 360 Fed. 2d 816 - on rehearing, 16 June, 1966 - reversed for lack of substantial evidence, reinstated, unpublished as of this date.)

Since review of a judgment of a State Court is sought, petitioner will specify the requirements of the Supreme Court's Rule 23, (F): The heretofore mentioned Federal Questions numbered one thru five were raised by filing a pleading and amendment thereto, on 24 May, 1966 and 20 October, 1966 in the Alabama Supreme Court, (R1, 2, 3, 4, 5) That pleading was titled "in the nature of a Writ of Mandamus" and was treated as an application for a Writ of Certiorari,

which issued on 30 May, 1967. (R84 thru 89) The Alabama Supreme Court did not specifically pass on those questions; however, it commented in it's opinion, "The thrust of Weinberg's argument is that the Board's action is violative of the 14th Amendment of the Federal Constitution in that he has been deprived of his right to earn a livelihood as an attorney." (App. A, A8; R97) and, "He has not been denied due process of law." (App. A, A9; R99) .

Question six relating to the Board's wrongful prejudice, in that the Board's admission application, Question 11 (R9), compels disclosure of any law suits brought as a plaintiff, was not raised below. Petitioner had a pending legal proceeding against a member of the Alabama Bar (R8). The Alabama Supreme Court thought that fact significant, so that question is sought to be included in the Alabama Supreme Court's general finding that petitioner has not been denied due process. (App. A, A8, 9; R97, 98, 99)

Naturally, the Board would be sympathetic to one of its members being charged in a legal proceeding by an outsider. The Board would be prejudiced and perhaps subconsciously vote to deny an applicant the opportunity to gain employment, punishing him for resorting to the Courts against a member of the Bar.

In conclusion, the State Board was both judge and jury in this de novo proceeding. They failed to establish that petitioner is unworthy to qualify to earn a living within due process standards.

5. REASONS FOR GRANTING THE WRIT

This Court should grant the Writ because:

1. The Alabama State Bar rules have not been passed on before by this Court and the issue would be important to future law student applicants.

2. The Alabama Supreme Court has departed from the usual course of judicial proceedings as required by the due process clause.

   Schware v. Board of Bar Examiners (1957) 353 U.S. 232, 1 L. Ed 2d 796, 77 S. Ct. 752 Konigsberg v. State Bar of California (1957) 353 U.S. 252, 1 L. Ed 2d 1441, reh. den. 354 U.S. 927, 1 L. Ed 2d 1441 366 U.S. 36, 6 L. Ed 2d 105, 81 S. Ct. 997 (1961) Sequal

3. To permanently deny petitioner the right to ever earn a living as a lawyer is not justified by the record.

6. CONCLUSION

1. The Court may reverse and allow petitioner to take the three day examination, and if he passes, be legally admitted to the Bar and Alabama Supreme Court.

2. The Court may determine how long petitioner must be denied the right to qualify to practice law.

3. The Court may affirm the Alabama Supreme Court, in effect permanently denying petitioner the right to earn a living as a lawyer and denying petitioner many job opportunities as an employee attorney in private as well as public employment.

Respectfully submitted,

David R Weinberg

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APPENDIX A

COPY OF ALABAMA SUPREME COURT'S OPINION

JUN 22 1967

THE STATE OF ALABAMA --- JUDICIAL DEPARTMENT

THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1966-67

Ex parte David R. Weinberg
(In Re David R. Weinberg

3 Div. 240 v.

Board of Commissioners
of the Alabama State Bar, et al)

Petition for Review

HARWOOD, JUSTICE

This is a proceeding seeking to have reviewed the action of the Board of Commissioners of the Alabama State Bar denying David R. Weinberg the right to take the bar examination looking toward his being licensed as an attorney and admitted to the bar of Alabama.

On 14 February 1962, Weinberg executed and duly filed with the State Bar Association his application to register as a law student. Such registration is required under the rules of the Alabama State Bar of those students intending to take the bar examination for admission to the bar of this state.

Question 6 of this registration reads: "Have you ever been charged with violating any State or Federal law, or City Ordinance? If so, state the facts fully on separate sheets, giving dates, places and outcome. Note: Minor traffic violations need not be shown."

To this question Weinberg answered, "None."

This questionaire, and answers thereto, purports to have been sworn to before a notary public.

In June 1966, Weinberg filed with the Alabama State Bar a sworn application looking toward his being permitted to stand the bar examination. Question 11 of this application is:

> "Have you ever been a party or otherwise involved in any legal proceeding, civil or criminal?"

To this question Weinberg answered, "Yes," and attached a separate sheet in explanation of this affirmative answer, as follows:

> "The Records show
>
> "(1) I was arrested on a Bastardy Warrant in 1959. I acknowledged paternity in Juvenile Court the Court Records show I was arrested charged and plead guilty to desertion & non support, sentence suspended to make support payments.
>
> "(2) 2 clients at Fairfield Paint & Body for debts in 1964
>
> "(3) I R S suit for Reinstatement for falsifying job

application -- I did not intentionally hide the facts in (1) above on said job form. Partially reversed in toto, December 22, 1966.

"(4) B. McCullough, Jr. improper defense Bastardy action & disclosing Bastardy action Pending C C in B'ham -- See your Records trying to settle

"(5) Review Bar decision in S C in Ala would not let me take the Bar exam I will dismiss the suit on about Feb 10, 1966 See your Records Character & Fitness Disapproved application July 20, 1965."

On 20 July 1965, the Character and Fitness Committee of the Alabama State Bar disapproved Weinberg's application to sit for the bar examination, and later after a de novo hearing before the Board of Commissioners of the Alabama State Bar that body affirmed the action of the Committee.

Weinberg then instituted a proceeding in this court to review the action of the Board of Commissioners. After a hearing in this court, briefs were requested, and timely filed. After briefs had been filed, Weinberg dismissed the proceedings.

On 4 February 1966, Weinberg filed a second sworn application to stand the bar examination. Again he answered Question 11 in the affirmative and appended a sheet showing the legal actions in which he had been involved.

This showing is in substance the same as that made in connection with his

original application to stand the bar examination, and in the interest of brevity we will not set it forth.

The Committee on Character and Fitness, after a hearing, denied this second application. Weinberg again appealed the action of the Committee to the Board of Commissioners which body, after a hearing de novo, entered an order approving the action of the Committee.

This appeal is from this second order of the Board of Commissioners.

At the second hearing before the Board of Commissioners, the record shows that Weinberg sought to file with the Board numerous documents which he had written but which were not in affidavit form. One of these documents was Weinberg's "Explanation of Unintentional False Answer on Registration Affidavit in 1962."

In it he sets forth (a) he did not swear to the application; (b) he had forgotten the bastardy and non support proceedings for he "did not go around thinking of the proceedings as it was an unpleasant matter;" (c) he did not carefully read and understand the question, but understood the question to relate to serious crimes "like stealing, murder, robbery and embezzlement and to criminals. I filled out the form and the Secretary must have signed it, though I did not see her do so."

Immediate answers to these explanations are: (a) The application purports to be sworn to and was filed by Weinberg. (b) To suppose Weinberg had forgotten the bastardy and non support

proceedings, particularly since he was presumably making regular payments for the support of the child under the suspension of sentence order, would indeed trifle with the intelligence of a reasonable mind. (c) The question to be answered was not limited to serious crimes as enumerated in the explanation.

Even so, at the hearing before the Board it was patiently explained to Weinberg that the written documents which he had executed and offered would not be evidence of probative value unless he swore to them. This he refused to do. He was then asked if he would be willing to be sworn before the Board and thereafter affirm the truthfulness of the documents. This offer he also declined, and professed nervousness at appearing before the whole Board. It was thereupon suggested that the meeting recess and that a committee of three members of the Board be appointed to confer with Weinberg during the recess to reassure him and possibly relieve him of his nervousness. This suggestion was adopted.

Upon the reconvening of the Board after the recess, Hon. T. B. Hill, the chairman of the committee appointed to confer with Weinberg, made the following report to the Board:

> "Mr. President, your Committee met with Mr. Weinberg upon our adjournment before lunch, and he had this file in there with him. He said he preferred not to appear and testify before the Commission. We told him that he was not required to testify, that we would be very glad to present his evidence to the Commission if he didn't

want to get on the stand, but that we felt like in order for the evidence to be competent, these several statements which he had written out and signed, that they should be sworn to before a Notary and he said, 'Well, he didn't believe he wanted to do that, that he didn't care to swear to them, and we told him that we didn't feel that it was competent evidence unless they were sworn statements, but that, of course, we would present it to the Commission just in the form that he has presented it. We asked him why he didn't want to come before the Commission orally or swear to it, and he said he was nervous and that he was frightened and that he felt like he would prefer not to. Then we told him we would be glad to postpone consideration of the matter until after lunch or until tomorrow, or until the next meeting of the Commission, and he said, No, that he would prefer that the matter be submitted in its present form to the Commission and he asked if we thought he should figure out some excuse why he wasn't willing to testify, and we told him, of course, that was up to him, so then he prepared this statement, and here is what he submitted as his excuse for not being willing to testify or to swear to these statements.

"(Reading) 'To The Board. I became frightened and scared,

being one hundred miles from home, and was scared to testify on the stand before the about thirty members. I would appreciate it if you would file my papers for me in the appeal. I wanted to submit my letter. Signed David R. Weinberg.' "

A number of letters from various parties attesting to Weinberg's good character were offered and received by the Board.

The Board then unanimously voted to disallow the application of Weinberg to sit for the bar examination, and further affirmed the action of the Committee on Character and Fitness in its denial of the application.

In all of these proceedings, including the present appeal, Weinberg has represented himself. In his brief on this appeal he has intertwined matters relevant only to his abortive appeal upon the first denial by the Board disallowing him to sit for the bar examination. Of necessity, we have confined our review to matters relevant to the denial by the Board growing out of the denial of his second application. In brief, we find Weinberg asserting:

> "This High Court has refused injunctive relief for this applicant requesting that this applicant be allowed to take the exam while the matter is fresh in his mind."

This statement is erroneous in that Weinberg's first attempted review was dismissed on his motion before any review by this court.

The thrust of Weinberg's argument is that the Board's action is violative of the Fourteenth Amendment of the Federal Constitution in that he has been deprived of his right to earn a livelihood as an attorney.

It is Weinberg's contention that the Board has failed to introduce any evidence tending to show that he read or understood the questions on the form he filed in 1962; nor any showing that he did remember the bastardy and non support proceedings at the time he filled out the form, etc.

A prima facie case fully supporting the action of the Character and Fitness Committee, and of the Board after the de novo hearing, was well made out by the documentary evidence of the contradictions contained in the answers of the student's registration form and the application to take the bar examination as pertains to Weinberg being involved in prior court actions.

Weinberg now argues that his explanation of this contradiction in his answers is uncontroverted, and therefore the Board's action must be deemed capricious and arbitrary. Such argument falls of its own weight. Weinberg offered in evidence only a self serving unsworn written statement. The Board attempted to explain to him that such writing would be of no probative value unless he swore to it, either by affidavit, or if he desired, by swearing to the same before the Board. He adamantly refused to do either.

We think it significant, and the Committee and the Board must also have been so impressed, that Weinberg's

The thrust of Weinberg's argument
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the Fourteenth Amendment of the Federal
Constitution in that he has been deprived
of his right to earn a livelihood as an
attorney.

It is Weinberg's contention that
he was afforded no intermediary review
by the Committee on Character and Fitness
which was willing to show that he had or under-
took the obligations on the form he filled
out, showing any showing that he did
not have the honesty and non-support
of the constitution at the time he filled out the
application.

Upon facts in this case fully
before the action of the Character
and Fitness Committee, and of the Board
on de novo hearing, was well made
that the documentary evidence of the
conclusions contained in the answers
of the student's registration form and
the failure to take the bar examination
by Weinberg being involved in
the applications.

We think it significant, and the
Committee and the Board must also have
been so impressed, that Weinberg's

disclosures of prior legal involvements was made after he had filed suits against the Internal Revenue Service and against the attorney who had represented him in the bastardy and non support proceedings. The bastardy and non support proceedings were thus publicized prior to their disclosure in Weinberg's application to sit for the bar examination.

> "A state can require high standards of qualification, such as good moral character, or proficiency in its law, before it admits an applicant to the bar." Schware v. Board of Bar Examiners, 353 U.S. 232, 1 L. Ed. 2d 796, 77 S. Ct. 757.

The burden was upon Weinberg to present favorable evidence of his good moral character as a prerequisite to his being permitted to sit for the bar examination. The Board was presented with substantial evidence that Weinberg's moral character was questionable because of the belated disclosure of the legal proceedings against him. He was afforded a sympathetic and full hearing. He refused to offer evidence of any probative force in explanation of his contradictory answers. He has not been denied due process of law.

AFFIRMED.

Livingston, C. J., Simpson and Merrill, J. J., concur.

APPENDIX B

COPY OF

THE CHARACTER & FITNESS COMMITTEE'S ORDER

IN THE MATTER OF DAVID R. WEINBERG APPLICANT) BEFORE THE CHARACTER AND FITNESS COMMITTEE OF THE ALABAMA STATE BAR

O R D E R

The application of David R. Weinberg coming on to be considered by the Character and Fitness Committee of the Alabama State Bar, and the same having been considered, the said application is hereby disapproved. The above-mentioned disapproval is based on the following findings of fact:

Heretofore, on to wit, the 14th day of February, 1962, the said David R. Weinberg filed an application for registration as a law student, and as would appear from the said application for registration as a law student, which is part of the official files of the Alabama State Bar and which, by this reference thereto, is to be considered incorporated herein, he gave the answers as shown by said application for registration, and was duly registered as a law student.

In the month of June, said David R. Weinberg filed an application to stand the State Bar Examination, which said application is also a part of the official files of the Alabama State Bar,

and by this reference thereto, is to be considered incorporated in this finding. In said last mentioned application, he gave answers to questions similar to those propounded in his application for registration as a law student, which were in direct conflict thereto.

The said David R. Weinberg was thereupon invited to appear before the Character and Fitness Committee of the Alabama State Bar to explain giving conflicting answers to material questions. He did so appear and the explanations made by him, and the fact of the misstatements of material facts in his application for registration as a law student led this Character and Fitness Committee to conclude that the said David R. Weinberg was not a fit person to be approved for the State Bar Examination, and it did disapprove his application.

The said David R. Weinberg did then, as appears from the official records of the Alabama State Bar, on July 27, 1965, appealed to the Board of Commissioners of the Alabama State Bar from the order made by this Character and Fitness Committee, and following a hearing of the matter before the Board of Commissioners of the Alabama State Bar, it adopted a resolution upholding the action of the Character and Fitness Committee.

Thereafter, the said David R. Weinberg did file a proceeding in the Supreme Court of Alabama, in which its order was sought permitting him to stand the State Bar Examination. After briefs had been filed, the said David R. Weinberg then, on the 3rd day of February, 1966 dismissed his proceedings in the Supreme Court of Alabama, and re-filed an appli-

cation to sit for the State Bar Examination.

This Character and Fitness Committee having already heard and considered the testimony of the said David R. Weinberg, and already having found that the said David R. Weinberg does not possess those traits of character required for one seeking admission to the Bar of Alabama, has made this order based on the testimony already adduced, not deeming it necessary that a repetitious hearing shall be had on the subject.

Dated this 17th day of February, 1966.

/s/ Oakley Melton, Jr.
Oakley Melton, Chairman

/s/ Drayton Hamilton
Drayton Hamilton

/s/ Frank Riggs
Frank Riggs

APPENDIX C

STATUTES INVOLVED

"The Board of Commissioners shall have power (A) to determine, by rules, the qualifications and requirements for admission to the practice of law." Tit. 46, Sec. 25, Code of Alabama, 1940, as recompiled 1958.

"RULES GOVERNING ADMISSION TO THE BAR OF ALABAMA

I.

REGISTRATION OF LAW STUDENTS

1. Except as otherwise hereinafter provided, every person entering a law school after June 1, 1962, with the intention of thereafter applying for admission to the Alabama Bar must, prior to the date such applicant proposes to begin study of law, or within six months thereafter, file with the Secretary of the Board of Commissioners of the Alabama State Bar written notice of his or her intention to begin such study, and thereafter to apply for admission to the Alabama Bar, and shall request that his or her name be registered in said Secretary's office accordingly. Such notice shall be accompanied by a fee of $2.00 and also by a sworn application in substantially the following form:" (P. 2, Board's Rules)

II.

". . . . .

"(B) Proof, in such form as the Committee on Character and Fitness may require, as to the applicant's age, residence, character and fitness, and as to his possessing the requisite educational qualifications as they are now or as they may hereafter be prescribed." (P. 7, Board's Rules)

V.

". . . . . Such appeal shall be heard and determined de novo at the next regular, adjourned or special meeting of the Board held after the appeal has been taken." (P. 12, Board's Rules)

"The burden is on the applicant to establish to the reasonable satisfaction of a majority of the said Committee that he possesses such character and qualifications as to justify his admission to the Bar and qualify him to perform the duties of an attorney and counselor at law." (P. 13, Board's Rules)

- ENDS THIS PETITION -

David R. Weinberg

DAVID R. WEINBERG, PRO SE

SUPREME COURT, U. S.

FILED

DEC 29 1967

JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1967

NO. 819

DAVID R. WEINBERG,
Petitioner

v.

BOARD OF COMMISSIONERS OF THE
ALABAMA STATE BAR, et al.
Respondents

BRIEF OF RESPONDENTS

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I N D E X

	Page
Jurisdiction	2
Questions Presented	2-3
Statutes and Rules Involved	3-4
Statement of the Case	5-11
Argument	11
Question A	11
Question B	12
Conclusion	13-14

CASES CITED

	Page
Ex parte David R. Weinberg, Ala. 201 So. 2d 38	1
Gault v. U. S., unreported	2
Konigsberg v. State Bar of California, 353 U. S. 252, 366 U. S. 36	2,12,13
Schware v. Board of Bar Examiners 353 U. S. 232	2, 12

STATUTES AND RULES

Title 46, Sec. 25, Code of Alabama	3
Rules Governing Admission to the Bar of Alabama	3-4

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INTRODUCTION

This Brief of Respondents is filed in opposition to a Petition for Writ of Certiorari wherein the Petitioner seeks to have this Honorable Court review a decision and opinion of the Supreme Court of Alabama rendered on June 22, 1967, Ex parte David R. Weinberg, _____ Ala. _____ 201 So. 2d 38. The Supreme Court of Alabama held that an applicant who had given contradictory answers under oath to questions

relating to involvement in prior court actions on student registration form and application to take bar exam, who received sympathetic and full hearing, who refused to offer evidence of any probative force in explanation of his contradictory answers, and who refused to swear to unsworn self-serving statements, was not denied due process of law by refusal to grant permission to take bar examination.

JURISDICTION

The Petitioner seeks to invoke jurisdiction under 28 U. S. Code, Sec. 1651 (A), and cites three cases of the Supreme Court of the United States, namely, Schware v. Board of Bar Examiners, 353 U. S. 232, Konigsberg v. State Bar of California, 353 U. S. 252, 366 U. S. 36, and Gault vs. U. S. (May 15, 1967) unreported. Gault is completely inapposite, whereas Schware and Konigsberg support Respondents' rather than Petitioner's position, enunciating the propositions (a) that a state can require high standards of qualification, such as good moral character, and (b) that a state may place the burden of proof on an applicant to establish good moral character.

QUESTIONS PRESENTED

The Petitioner has presented six questions. The Respondents submit that the questions presented are more clearly stated as follows:

Question A. The rules for admission to the Alabama Bar requiring an applicant to establish his good moral character do not offend any provision of the Constitution of the United States.

Question B. There is ample relevant material and competent evidence in the record to support a finding by the Character and Fitness Committee and the Board of Commissioners that Petitioner failed to establish the requisite qualities of character and fitness for admission to the Alabama State Bar.

STATUTES AND RULES INVOLVED

Title 46, Sec. 25, Code of Alabama 1940 (A 13 Petition For Writ of Certiorari)

Rules Governing Admission to the Bar of Alabama(A13-A14, Petition for Writ of Certiorari) Respondents supplement the material contained in Appendix to Petition with the following:

1. - - - Such notice shall be accompanied by a fee of $2.00 and also by a sworn application in substantially the following form:

- - - - - - -

6. (a) Have you ever been charged with violating any State or Federal

law, or City ordinance? If so, state the facts fully on a separate sheet giving dates, places, and outcome. Note: Minor traffic violations need not be shown.

(b) Have you ever been involved in a legal proceeding of any kind? If so, state the facts fully on attached sheet, showing dates, place, and name of the case and in what court. (p. 2, 3, Rules)

- - - - - -

Each applicant for admission to the Bar of Alabama shall file with the Secretary the following:

(a) A full and direct answer subscribed and sworn to by the applicant before some officer authorized to administer oaths, to each of the following questions:

- - - - -

11. (a) Have you ever been a party or otherwise involved in any legal proceeding, civil or criminal?

(b) If so, state the facts fully. (p. 5, 6, Rules).

STATEMENT OF THE CASE

The Respondents will not again outline the steps which culminated in the decision and opinion of the Supreme Court of Alabama rendered on June 22, 1967, namely, the hearings before the Committee on Character and Fitness, the hearings before the Board of Commissioners, and the first appeal of Petitioner to the Supreme Court of Alabama, which was dismissed on Petitioner's motion. The decision and opinion describes the history of the case accurately (Petition for Writ of Certiorari, A1-A9)

The facts which are decisive of the issues in this case are undisputed. The evidence concerning two factors is uncontradicted.

I

Contradictory answers on student registration form and application to take bar exam.

The Petitioner admits that he gave a false answer to a question on the application to register as a law student executed on February 14, 1962.

This application form was introduced in evidence before the Board of Commissioners on May 20, 1966, and the pertinent

question and answer was read into the record. (R. 37-38)

Petitioner admits the execution of this application on February 14, 1962, and his entire case is predicated upon his abortive attempts to explain his false answer. This is evident from the following quotes from his Petition for Writ of Mandamus filed in the Supreme Court of Alabama:

- - - - -

"On or about February 14, 1962, Petitioner did register with the Board, as a law student and did file the required forms and pay the required fees as set down in the Boards rules. (p. 1 Petition for Writ of Mandamus)

- -- -- -

"The Boards finding is wrongfully based on conflicting answers made on application forms and registration forms as an automatic basis for exclusion in violation of the due process clause of the 14th Amendment of the U. S. Constitution.

"The false registration form made in 1962, has not been proven, under the civil rules of evidence to be purposely concealed, under Alabama law.

"The false statement made in 1962 is to remote as evidence to support a finding of present fitness to qualify to work as a lawyer in Alabama." (emphasis added) (p. 2 Petition for Writ of Mandamus)

The Supreme Court of Alabama was privileged to rely upon those facts admitted in the Brief filed by the Petitioner with said Court. Petitioner's Brief contained the following significant statements:

- - - -

"This Court has been requested to rule on the following allegations, as Petitioner contends, and as he alledges in his petition filed in this Court that Petitioner's rights under the Due Process Clause of the 14th Amendment to the U. S. Constitution were violated in that: (1) the Board's finding is based on Petitioner's conflicting answers made on the Board's registration form and admission application as an automatic rule of disqualification; - - - -(emphasis added) (p.1 Petitioner's Brief)

"- - - the Board's 1962 registration as a law student form has not been proven to be purposely concealed

warranting exclusion and that the 1962 false statement made on the Board's registration form is too remote under Alabama law to support a finding to disqualify Petitioner. (emphasis added) (p. 2 Petitioner's Brief)

- - - -

"Introduced into evidence by the Board was a February 14, 1962 registration, a law student form, and a June, 1965 admission application to take the bar exam, both signed and filed by Petitioner. On the 1965 admission application was the Petitioner's voluntary admission of a 1959-1960 bastardy - desertion - non-support proceeding, in which Petitioner acknowledged paternity in the bastardy proceeding through his attorney, and on the same day Petitioner was convicted on non-support. On the 1962 registration form was the statement that Petitioner had never been involved in any court proceeding. Said statement conflicted with the 1965 admission application. (emphasis added) (p. 3 Petitioner's Brief)

- - - - -

"The Petitioner's application for registration dated in February, 1962 and the application for admission in

June, 1965 have clearly conflicting statements concerning Petitioner's involvement in a 1959-1960 bastardy and non-support conviction." (emphasis added) (p. 18 Petitioner's Brief)

II

Petitioner's conduct before the Board of Commissioners and refusal to swear to statements concerning admitted false answer on registration form.

At a hearing before the Board of Commissioners on May 20, 1966, the Petitioner appeared and presented six unsworn self-serving written statements. He adamantly refused to swear to the truthfulness of these statements before the Board. (R. 27, 33) He adamantly refused to swear to the truthfulness of these statements before a Notary Public and present them in affidavit form. (R. 35-37)

Because Petitioner professed to a certain amount of nervousness, an offer was made to continue the hearing to a later hour, until the following day, or until a later meeting of the Board. This offer was refused. (R. 32)

A special committee of three was appointed to confer with Petitioner to relieve him of his professed nervousness and explain to him the necessity of swearing to his proffered statements. Special attention is called to the report of Mr. T. B. Hill, Chairman of this committee (R. 35-37) (Opinion of the Supreme Court of Alabama, Petition for Writ of Certiorari, A5-A7)

Although Petitioner had been warned that his proffered unsworn statements would be of no probative value, they were offered into evidence and read into the record at his request. These statements consisted of the following: (a) Explanation of Unintentional False Answer On Registration Affidavit In 1962 (R. 42-43), (b) statement dated May 20, 1966 (R.43) (c) Statement of Applicant To The Board (R. 43-44), (d) Offer of Attorney Roy Landrums Court Records To Help Define What Is Such Character To Be Fit To Be An Attorney In Alabama (R.45), (e) Statement Regarding My Law Suit Against The Government For Wrongfully Firing Me (R.47), and (f) Explanation Of Non Support Conviction (R. 47-48)

Letters from a number of persons attesting to Petitioner's character were placed in evidence. (R. 48-49)

A motion was thereupon made, seconded and carried without dissenting vote that the application of Petitioner to stand the State Bar Examination be disallowed and the action of the Character and Fitness Committee in disallowing said application be upheld and affirmed. (R.81)

ARGUMENT

QUESTION A

The rules for admission to the Alabama Bar requiring an applicant to establish his good moral character do not offend any provision of the Constitution of the United States

"A State can require high standards of qualification such as good moral character or proficiency in its law, before it admits an applicant to the bar, - - - - -

"To a wide and deep extent, the law depends upon the disciplined standards of the profession and belief in the integrity of the courts. We cannot fail to accord such confidence to the state process, and we must attribute to its courts the exercise of a fair and not a biased judgment in passing upon the application of those

seeking entry into the profession." Schware v. Board of Bar Examiners, 353 U. S.

"Consideration of petitioner's contentions as to the effect of this Court's decision in the former Konigsberg case requires that there be kept clearly in mind what is entailed in California's rule, comparable to that in many states, that an applicant for admission to the bar bears the burden of proof of 'good moral character' - - - - a requirement whose validity is not, nor could well be, drawn in question here." Konigsberg v. State Bar of California, 366 U. S. 36

QUESTION B

There is ample relevant material and competent evidence in the record to support a finding by the Character and Fitness Committee and the Board of Commissioners that Petitioner failed to establish the requisite qualities of character and fitness for admission to the Alabama State Bar

Petitioner admits filing a false affidavit on February 14, 1962, by failing to disclose certain prior court actions. He was

given every opportunity to explain these matters under oath, and he steadfastly refused to do so.

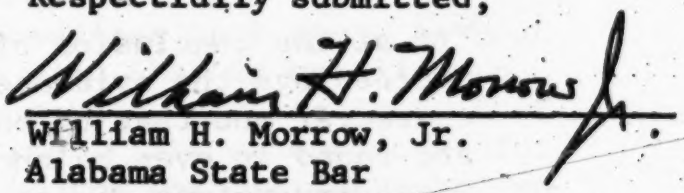
> "If at the conclusion of the proceedings the evidence of good character and that of bad character are found in even balance, the State may refuse admission to the applicant, just as in an ordinary suit a plaintiff may fail in his case because he has not met his burden of proof." Konigsberg v. State Bar of California, supra.

CONCLUSION

Petitioner was afforded a sympathetic and full hearing. He refused to offer evidence of any probative force in explanation of his contradictory answers There was no denial of due process. The

pending Petition for Writ of Certiorari should be denied.

Respectfully submitted,



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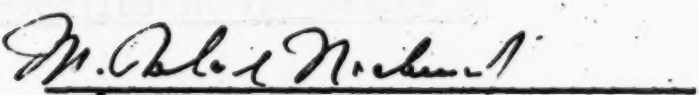

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